



22 January 1997

**TRANSCRIPT OF THE PRIME MINISTER  
THE HON JOHN HOWARD MP  
PRESS CONFERENCE - SYDNEY**

E&OE.....

Ladies and gentlemen, this morning was a very useful meeting between myself and the State Premiers and the Chief Minister of the Northern Territory and the Acting Chief Minister of the ACT. No doubt you've spoken to them in different configurations on the way out. This is an immensely difficult issue. The Wik decision overturned one of the basic tenets of the *Native Title Act*. Perhaps to dramatise it, could I read if I may, from the recital to the *Native Title Act* on page 2 when it reads as follows :

*The High Court has a) rejected the doctrine that Australia was terra nullius at the time of European settlement and held that Native Title is extinguished by valid government acts that are inconsistent with the continued existence of Native Title rights and interests such as the grant of freehold or leasehold estates.*

Now the language, the underpinning contained in the recital could not have been clearer. I must say that I was surprised at the Wik decision but like any other citizen of Australia I accept it as an authoritative interpretation of the law of Australia at the time the decision was given. I think in all of these things it's very important to distinguish the roles of the courts and the parliament. It is the role of the court to interpret the law, it is the role of the Parliament to make the law and to amend the law, it is in the public interest that that ought to happen.

The discussions I had today are the beginning of a process of consultation. I'll be talking to representatives of the Aboriginal community. I'll be having two discussions with them. The first will take place with Mr Djerrkura and the ATSIC Commissioner dealing with Native Title matters on, I think, the third of February and then there'll be a larger meeting between myself and those two gentlemen and other representatives of the Aboriginal community on the sixth. I'll also talk to the representatives of the pastoral industry and the mining industry, the former have asked that that meeting take place not before the 29th of January. I think I could have done it before then any way.

The point of mentioning this is to make it plain that I intend to talk ... people who are very directly affected. I may talk again to the Premiers, they are putting certain proposals in more detail by way of discussion papers to the Government. And then without too much delay I hope the Federal Government can reach a view as to what ought to be done.

It's not an option to do nothing because the Wik decision has really made an Act that was regarded by many people as unworkable even more unworkable. There is a view amongst the Government's legal advisers that some provisions of the *Native Title Act* in fact render compliance with the legal affect of the Wik decision impossible because there's a clause, 227 I think it is in the *Native Title Act*, which says that a holder of land cannot deal with that land which is in any way inconsistent with the interests of the native title holder and yet the Wik decision is meant to say that if there is a conflict between the interests and the rights of a lease holder and a native title holder then the rights of the lease holder will prevail, or to use the words of one of the other judges, the rights of the native title holder must yield to the rights and the interests of the lease holder. Now on the face of it that represents a fundamental conflict and there's also the very obvious question of what about post 1994 leases that perhaps could be regarded as invalid because of the operation of the *Native Title Act*. Now the Aboriginal community has an immense interest in this issue, it has a lot at stake and I understand that and I respect their interests. The miners do, the farmers do and of course the State Governments have the enduring responsibility for land management. There is, of course, the interest of the 18 million people of Australia and the 18 million people of Australia want a just outcome, they want a commonsense outcome, they don't want an outcome that is going to paralyse investment and threaten existing jobs and destroy potential jobs. There is, I believe, in the community a desire for a commonsense, fair and reasonably speedy response.

We did have a very useful meeting this morning and I don't think anybody relishes the fact that we have had a lot of confusion arise out of this decision, but it's happened. I don't criticise the decision, it's not my place to do that - I accept it but I also assert the right as the leader of the national Government to consider changes to the law which we might think are necessary in the wake of that decision. I think it's very important that we distinguish those things from the very beginning. Yes, Mr ...

**JOURNALIST:**

What is the value of ...it seems the ... magistrate can downgrade...?

**PRIME MINISTER:**

We haven't taken decisions to do anything, there is always value in talk if that talk takes place in an atmosphere of goodwill. I don't believe at the end of the day we're going to be able to devise a solution that completely satisfies everybody. In the end I've got to devise a solution which I think best promotes the national interest, taking into account all of the things that feed into the national interest, not only economic stability and legal certainty but also a sense of basic fairness and justice that all sections of the community feel. I've got to say again that the Wik decision has fundamentally altered one of the key understandings of the *Native Title Act* and it was never

envisaged. The former Prime Minister positively asserted in his second reading speech that it was the view of his Government and he so assured the pastoral industry and he so assured the mining industry that the grant of a leasehold estate extinguished native title. Now that has changed. It is just not real life for anybody to say that that having changed it we just, sort of, don't have to look at the thing again. Now I think it's going to be very, very hard but a lot of talk and a lot of discussion is very desirable.  
Mr Harvey.

**HARVEY:**

...package of amendments for the *Native Title Act*, sort of, in the pipeline. Does this mean you'll, sort of, rip them up and start again because a more fundamental plan is needed?

**PRIME MINISTER:**

No I wouldn't say that. There are a lot of those amendments that I would like to see go ahead, I would like to see go ahead any way. The question of whether they proceed in some amended form separately from any other amendments post Wik or whether we hold back the existing amendments for a few weeks and try and incorporate with those some further amendments is something that I haven't decided yet because it will depend on the talks I have with the Aboriginal community and with the farmers and the miners. We haven't taken a decision. We've had views put to us, there have been a lot of options canvassed, many of them are out in the public domain and that is no bad thing. I think it would be a good thing if there is a very wide public understanding of some of the complexities that are thrown up. I haven't made up my mind about that but it's possible that we'll wrap them all up, maybe we won't, I don't know yet.

**JOURNALIST:**

Is it an option to extinguish native title.. (inaudible)

**PRIME MINISTER:**

All options are on the table obviously. I think the one option that is not on the table is any sort of comprehensive repudiation of the notion of native title and any idea that we would return to a sort of a Terra Nullius, that is not on the table.

**JOURNALIST:**

Prime Minister, you've said that doing nothing is not an option. You're also saying that (inaudible) Can you give us a guarantee now that you won't in any amendments breach the spirit of the *Racial Discrimination Act*?

**PRIME MINISTER:**

I wouldn't have thought that we will do anything to breach the spirit of racial harmony or racial discrimination. If you're asking me for a guarantee that we won't touch

existing legislation, I can't give that. What I said before the election, what I said after the election was not breaching the thrust of the *Racial Discrimination Act*. I'd remind you of course that the Keating Government amended the *Racial Discrimination Act* in order to validate leases which had been issued after 1975 and before the coming into operation of the *Native Title Act*. So any suggestion that an amendment per se to the *Racial Discrimination Act* has always been sort of verboten. As a matter of principle it is just wrong.

**JOURNALIST:**

Prime Minister when you say a speedy response, are you talking what, before the middle of the year, before...

**PRIME MINISTER:**

Look, don't start tying me down. I'm not getting into this months and weeks. I think it is evident from the fact that I came back from holiday on Monday and I've had this meeting today and I'm arranging all of these meetings that I am giving this matter a certain amount of, a lot of priority and that will continue to be the case. Look, I am not going to start locking myself in to particular dates so forget it. I am not going to get into that game. Peter?

**HARVEY:**

... legislation becomes necessary, what do you do about the Senate?

**PRIME MINISTER:**

Let's wait and see. I mean, the Senate has proved to be an interesting second chamber over the last twelve months and I don't think we will be disappointed in 1997 but what I want to try and do Peter is, what I will do is to talk to all of the people who have an interest in this. I've stressed that and I have made no, I have reached no understandings or given no commitments to anybody. I have talked to the States. I frankly think they have a big problem. New South Wales now has a much bigger problem than previously thought. You're looking at 48% of the land area of New South Wales, I have advice, which is potentially claimable. I have advice from the Federal Attorney General's Department that the action taken by Mr Hobbs, was it, in Queensland that was widely criticised by a lot of people. It was in fact quite justified according to the Federal Attorney General's analysis of the legislation. I, in fact, am examining the possibility of releasing the legal advice which has been given to me by the Federal Attorney General's Department on the impact of the Wik decision.

So I mean, the States are dealing with a difficult situation but I am, as far as the Senate is concerned, what we want to do is to make up our minds about what is the right response and if that response involves legislation then we'll put that legislation to the Parliament. Now whether the Senate ends up passing it or not, I don't know. I mean, you never know, as we found out last year. It's a very exciting game.

**JOURNALIST:**

Why should Aboriginals regard any decision to nullify the impact of the High Court decision as a fundamental breach of their rights?

**PRIME MINISTER:**

It has never been the law or custom of this country that every decision made by the High Court in relation to the rights of individual Australians is absolutely sacrosanct. I mean, High Court decisions from time, not from time immemorial, from the time the High Court was established are constantly being amended or revised or changed by Parliament. I mean, I think there is a fundamental misunderstanding in too wide a section of the Australian community about the respective roles of the Parliament and the courts in this country and under the Anglo-Australian legal system, under which we operate. The courts are there to declare the law as it now is and always has been. And if Parliament thinks fit it will try and change that law but if it doesn't think fit it won't and if it can't change the law well it can't. That is our system.

**JOURNALIST:**

... concerned (inaudible)

**PRIME MINISTER:**

I do not accept the proposition that it is the role of the courts to actively seek out areas where they do not believe Parliament has done what they think fit and seek to fill that role.

**JOURNALIST:**

(inaudible)

**PRIME MINISTER:**

I wouldn't seek to categorise that. I'm stating the principle and I think we do have to accept that the more judges in our community take a public stance on issues, they can no longer expect to have the traditional immunity from criticism and reactions from other public figures. Now at no stage either in the Mabo case debate or in the wake of the Wik decision did I ever criticise myself the High Court and in fact I invite you to search the record and find indeed any criticism of the original Mabo decision. I had no quarrel with the original Mabo decision. I said that frequently. I thought the former Government made a real hash of the *Native Title Act* and we have seen plenty of evidence of that. I think the pastoralists of Australia were badly deceived and misled by quite a number of people at the time that legislation was passed. I am surprised at the Wik decision but I accept it. I don't criticise it but it certainly went against my understanding and it certainly went against the recital in this Act. I mean, you couldn't get anything clearer than that. The same clause that deals with Terra Nullius tells us that the grant of the leasehold or freehold estate gets rid of native title.

Now as far as judicial activism is concerned I state the general principle. But we do have to have an understanding. I mean, we're all the time talking about having a big constitutional debate about the future of our head of state. There seems to be a lot of misunderstanding in Australia about the respective roles of Parliament and the courts. The courts' role is to declare the law. The role of the Parliament is to make the law. The role of the people of course is to control both the law and the Parliament.

**JOURNALIST:**

You said that it's the High Court that declares what the law is...

**PRIME MINISTER:**

As the law now is, yes.

**JOURNALIST:**

As the law now is, it is declared that Aboriginal people have common law rights to native title. If you are then going to amend to move those rights, why shouldn't Aboriginal people feel that their rights are being quashed?

**PRIME MINISTER:**

I wasn't denying, I think I said at the beginning, that whatever decision that is finally taken some or others in the community may not agree, but we haven't taken any decision, any decision at all. I'm not quite sure what you are getting at Laura, I'm sorry.

**TINGLE:**

... arguing that in response to questions about rights that the High Court has some power, the Parliament has some power....

**PRIME MINISTER:**

What I'm ... as far as changing the law is concerned, parliaments subject to the constitution have the right....

**TINGLE:**

... distinguish that...

**JOURNALIST:**

Mr Howard,...

**PRIME MINISTER:**

I'm sorry, I'm just pursuing this interesting intellectual....

**TINGLE:**

All I'm saying is that those rights guarantee, so I'm just trying to clarify that you recognise that some of those rights might...

**PRIME MINISTER:**

No, what I accept is that the High Court of Australia has said that the amplitude of Native Title includes the notion of co-existence of Native Title in relation to land over which a leasehold interest has been created. I accept that the law, .. that is the current law of Australia, and what we have to ask ourselves is whether, what are the consequences of that and having analysed the consequences of it, and I mean, for example, one of the consequences could be on our advice that it is not possible for a pastoralist to construct a dam on the leaseholder's estate without getting the permission of the native title holder who might have a right of coexistence. The problem is that the future act regime of the native title act potentially applies to anything that can be done on the land. Not only Section 227 but others.

**JOURNALIST:**

Given the preamble of the native title act and .....Labor Party.... support amendments to the native title act.

**PRIME MINISTER:**

I've never given the Labor Party lectures on moral obligations no. Never. I do think though the Labor Party carries and the current Leader of the Opposition carries a very heavy responsibility for having connived in misleading the pastoralists and many other people in the Australian community at the time the native title act was passed. I mean you have this, this so-called deal that was hammered out between the former government and representatives of the Aboriginal industry and the pastoral industry and it is very obvious from what has now unfolded... I mean, you had the clear words of the preamble to which one constituency was directed and then you had another, you had the government simultaneously saying 'oh don't worry we'll leave it to the courts to decide', well, I mean, they didn't leave Terra Nullius to the courts to decide. That had been decided, and what they were basically saying, they were saying one thing to one group of the Australian community and they were saying another thing to another group and I think this decision had exposed that duplicity.

**COLE-ADAMS:**

Is your advice that there may be some legislative ... which would not involve the Commonwealth and perhaps the States in .... and potentially very large compensation payouts?

**PRIME MINISTER:**

Well, we are still assembling advice. Obviously compensation is an issue and we're very conscious of that. It's easy, I mean, you can sort of talk in 'how long is a piece of string' terms about compensation in this area although there is also another view that because of the difficulty of establishing claims to entitlements, it is easy to overestimate compensation. We are still gathering advice on that and we are seeking outside counsel's advice as well as internal advice, and that outside advice hasn't come yet. Look, I don't want anybody to think that we have made any firm decisions of any kind, we haven't. It is a hugely difficult problem. I understand the strength of feeling in the Aboriginal community, I do. I understand they feel that after long years they have got justice in relation to native title under the original Mabo decision. I also understand that as a result of the Wik decision that Native Title thing may seem greater than they themselves had thought. I understand that. I also want them and the rest of the community to understand that on the advice available to me at the present time, this decision has the potential to create enormous uncertainty and we have an obligation to the Australian people to make certain that that uncertainty does not go on any longer than necessary and I have to say that the idea that you can just sort of walk away from it and leave it to people to sit down and talk about over a very very long period of time, perhaps years, I don't think that with the best will in the world that that is going to work. Now, I haven't found in my discussions with the Premiers any kind of narrow minded belligerence towards the Aboriginal community. I think in many respects the Native Title Act has not served the Aboriginal community well at all. There's only been on plain established and I don't want to behave in a way that does the Aboriginal community any ire, I really don't, I mean that. But it is a very difficult issue and at the end of the day everybody may have to give a bit in order to have a compromise in the national interest and that comment is directed at the Aboriginal community as much as it is directed at the pastoralists and the miners and the various State governments and I am genuinely seeking a solution.

**MILNE:**

Do you regard co-existence of rights between native title holders and pastoral lease holders as a viable option or is that non-viable?

**PRIME MINISTER:**

Well it depends somewhat in the form that those rights take. In some circumstances it could be quite a viable option yes. In other circumstances it could be a very difficult option. It entirely depends on how those rights are defined and what type of rights they are and their legal character. From a practical point of view pastoralists and Aborigines co-exist in many parts of Australia very easily, very easily indeed, and so it's not beyond the wit of Governments and people with good will to devise a system which allows co-existence to go on. So I don't from a practical point of view co-existence is really the problem.



**BONGIORNO:**

Given that you don't have the numbers in the Senate, will your round of negotiations and consultations involve the Opposition especially as Kim Beazley yesterday said that Labor wasn't opposed to amending the Native Title Act?

**PRIME MINISTER:**

Oh yes, I'd be very happy to talk to Mr Beazley at some stage and I understand that Senator Minchin's already had some discussion with Mr Melham about the matter but I'd be happy to talk to the Democrats and Senator Harradine and to Senator Colston and anybody, but it is a very difficult issue, it can't be left as it is. The world has changed as a result of Wik and we have to try and get a solution that is acceptable to, reasonably acceptable to all of the people involved but one at the end of the day that serves the overall national interest.

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